

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CLARENCE ANDERSON, III,)
)
)
Plaintiff,)
)
v.) Civil Action No. 1:19-cv-1139 AJT/IDD
)
MATTHEW DONAVAN, <i>et al.</i> ,)
)
)
)
Defendants.)
)

REPORT & RECOMMENDATION

This matter is before the Court on Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* [Dkt. No. 70]. Having reviewed the Motion, the undersigned Magistrate Judge recommends denying the Motion for the reasons that follow.

I. Background

Pursuant to 28 U.S.C. § 1915(e)(2)(A), a court must dismiss a case proceeding *in forma pauperis* if it “determines that the allegation of poverty is untrue.” A litigant need not be “absolutely destitute” to proceed *in forma pauperis*; however, “*in forma pauperis* status is ‘a privilege, not a right,’” and is only available to a litigant who establishes an inability, due to poverty, to pay the requisite filing fees and still provide for “the necessities of life.” *El v. U.S. Dep't of Com.*, No. 2:15CV532, 2016 WL 9223874, at *1 (E.D. Va. Sept. 21, 2016) quoting *Kunamneni v. Locke*, Nos. 1:09cv005; 1:09cv450, 2010 U.S. Dist. LEXIS 46876, at *3–4 (E.D. Va. May 12, 2010). When reviewing an *in forma pauperis* application, a court must afford due consideration to a party’s discretionary income. *Manzaneda v. Duenas*, No. 1:18CV40, 2018 WL 10149410, at *1 (E.D. Va. Jan. 18, 2018) citing *Brewer v. City of Overland Park Police Dep't*, 24 F. App'x 977, 979 (10th Cir. 2002) (denying an IFP where party's monthly income exceeded his monthly expenses by “a few hundred dollars” because his discretionary income was

sufficient to pay the filing fees).

Here, Plaintiff's application for *In Forma Pauperis* states that Plaintiff earns \$6,000.00 in income each month. Dkt. No. 70 at 1-2. Plaintiff represents that his total monthly expenses are \$3,887.00. *Id.* at 4-5. This amount of discretionary income would allow Plaintiff to pay the requisite filing fees and provide for the necessities of life. The Court, therefore, finds that Plaintiff has sufficient discretionary income available such that his allegation of poverty is untrue.

II. Recommendation

For the foregoing reasons, the undersigned recommends **DENYING** Plaintiff's Motion for Leave to Proceed *In Forma Pauperis*.

III. Notice

By mailing copies of this Report and Recommendation, the Court notifies the parties as follows. Objections to this Report and Recommendation, pursuant to 28 U.S.C. § 636 and Rule 72(b) of the Federal Rules of Civil Procedure, must be filed within fourteen (14) days of service on you of this Report and Recommendation. A failure to file timely objections to this Report and Recommendation waives appellate review of the substance of the Report and Recommendation and waives appellate review of a judgment based on this Report and Recommendation.

The Clerk is directed to send a copy of this Report and Recommendation to all counsel of record.

/s/ Ivan D. Davis
Ivan D. Davis
United States Magistrate Judge

January 16, 2024
Alexandria, Virginia